

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

RYAN P. O'BOYLE,

Petitioner,

-vs-

Case No. 14-C-206

**PAUL KEMPER, Warden,
Racine Correctional Institution,**

Respondent.

DECISION AND ORDER

Ryan P. O'Boyle moves to reconsider the Court's dismissal of his petition for a writ of habeas corpus for failure to exhaust his remedies in state court. The Court can consider this motion despite the bar on second or successive motions because it falls within the time period for bringing a motion to alter or amend the judgment under Federal Rule of Civil Procedure 59(e). *Curry v. United States*, 307 F.3d 664 (7th Cir. 2002).

The Court notes that its original understanding was mistaken: this petition attacks the conviction in Case Number 2011CF3261 (Milwaukee County), not Case Number 2012CF1325 (Milwaukee County). But the outcome is the same because, while the Wisconsin Court of Appeals recently affirmed the judgment in the latter case, Appeal Number 2013AP1004, a separate appeal is currently pending regarding the former, Appeal Number 2014AP80. Once again, O'Boyle's petition is premature; he must wait for the process to run its course in state court before he can pursue relief

in federal court. “We cannot review a habeas petitioner’s constitutional issue unless he has provided the state courts with an opportunity to resolve it ‘by invoking one complete round of the state’s established appellate review process.’” *Byers v. Basinger*, 610 F.3d 980, 985 (7th Cir. 2010).

O’Boyle’s motion for reconsideration [ECF No. 6] is **DENIED**.

Dated at Milwaukee, Wisconsin, this 12th day of March, 2014.

BY THE COURT:


HON. RUDOLPH T. RANDA
U.S. District Judge